

191—7.10(523) Special provisions applicable to election contests.

7.10(1) *Applicability.* This rule shall apply to any solicitation subject to this regulation by any person or group for the purpose of opposing a solicitation subject to this regulation by any other person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.

7.10(2) *Participant or participant in a solicitation.*

a. For purposes of this rule the term “participant” and “participant in a solicitation” include: (1) The insurer; (2) any director of the insurer, and any nominee for whose election as a director proxies are solicited; (3) any other person, acting alone or with one or more other persons, committees or groups, in organizing, directing or financing the solicitation.

b. For the purposes of this rule the term “participant” and “participant in a solicitation” do not include: (1) A bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of stock and who is not otherwise a participant; (2) any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy-soliciting material or performs ministerial or clerical duties; (3) any person employed in the capacity of attorney, accountant or advertising, public relations or financial adviser, and whose activities are limited to the performance of the person’s duties in the course of such employment; (4) any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates who is not otherwise a participant; or (5) any officer or director of, or any person regularly employed by any other participant, if such officer, director, or employee is not otherwise a participant.

7.10(3) *Filing of information required by Schedule B.*

a. No solicitation subject to this rule shall be made by any person other than the management of an insurer unless at least five business days prior thereto, or such shorter period as the commissioner may authorize upon a showing of good cause therefor, there has been filed, with the commissioner by or on behalf of each participant in such solicitation a statement in duplicate containing the information specified by Schedule B and a copy of any material proposed to be distributed to stockholders in furtherance of such solicitation. Where preliminary copies of any materials are filed, distribution to stockholders should be deferred until the commissioner’s comments have been received and complied with.

b. Within five business days after a solicitation subject to this rule is made by the management of an insurer, or such longer period as the commissioner may authorize upon a showing of good cause therefor, there shall be filed with the commissioner by or on behalf of each participant in such solicitation, other than the insurer, and by or on behalf of each management nominee for director, a statement in duplicate containing the information specified by Schedule B.

c. If any solicitation on behalf of a management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this rule in opposition thereto, a statement in duplicate containing the information specified in Schedule B shall be filed with the commissioner by or on behalf of each participant in such prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition thereto.

d. If, subsequent to the filing of the statements required by paragraphs “a,” “b” and “c” of this subrule, additional persons become participants in a solicitation subject to this rule, there shall be filed with the commissioner by or on behalf of each such person, a statement in duplicate containing the information specified by Schedule B, within three business days after such person becomes a participant, or such longer period as the commissioner may authorize upon a showing of good cause therefor.

e. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to such statement shall be filed promptly with the commissioner.

f. Each statement and amendment thereto filed pursuant to this paragraph shall be part of the public files of the commissioner.

7.10(4) *Solicitations prior to furnishing required written proxy statement.* Notwithstanding the provisions of 7.5(1), a solicitation subject to this rule may be made prior to furnishing stockholders a written proxy statement containing the information specified in Schedule A with respect to such solicitation, provided that:

a. The statements required by 7.10(3) hereof are filed by or on behalf of each participant in such solicitation.

b. No form of proxy is furnished to stockholders prior to the time the written proxy statement required by 7.5(1) is furnished to such persons. Provided, however, that this paragraph “*b*” shall not apply where a proxy statement then meeting the requirements of Schedule A has been furnished to stockholders.

c. At least the information specified in paragraphs “*b*” and “*c*” of the statements required by 7.10(3) hereof to be filed by each participant, or an appropriate summary thereof, are included in each communication sent or given to stockholders in connection with the solicitation.

d. A written proxy statement containing the information specified in Schedule A with respect to a solicitation is sent or given stockholders at the earliest practicable date.

7.10(5) *Solicitations prior to furnishing required written proxy statement—Filing requirements.* Two copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by 7.5(1) shall be filed with the commissioner in preliminary form at least five business days prior to the date definitive copies of such material are first sent or given to such persons, or shorter period as the commissioner may authorize upon a showing of good cause therefor.

7.10(6) *Application of this section to report.* Notwithstanding the provisions of 7.5(2) and 7.5(3), two copies of any portion of the report referred to in 7.5(2) which comments upon or refers to any solicitation subject to this rule, or any participant in any such solicitation, other than the solicitation by the management, shall be filed with the commissioner, as proxy material subject to this regulation. Such portion of the report shall be filed with the commissioner, in preliminary form, at least five business days prior to the date copies of the report are first sent or given to stockholders.